

1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF SPARTANBURG ) IN THE COURT OF GENERAL SESSIONS  
3  
4 Timothy Wilbanks, )  
5 Applicant, ) TRANSCRIPT OF RECORD  
6 -vs- ) 2006-CP-42-3107  
7 State of SC, )  
8 Respondent. ) June 17, 2011  
9 Spartanburg, South Carolina  
10

11 B E F O R E:

12 HONORABLE J. MARK HAYES, II, JUDGE  
13  
14

15 A P P E A R A N C E S:

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1 MS. WHITE: Good morning, Your Honor.

2 THE COURT: Yes, ma'am.

3 MS. WHITE: Your Honor, this is the case of Timothy  
4 Wilbanks vs. the State of South Carolina, it's Case Number  
5 2006-CP-42-3107. Your Honor, we took or -- testimony  
6 originally November 1st of 2010 on this case, the applicant's  
7 testimony, and held the record open for either deposition or  
8 testimony from his trial attorney at the time, Mr. James  
9 Hatcher, who was living outta state and working out of the  
10 country for a good portion of the time, he has just moved back  
11 so we have scheduled this to try to get his testimony today  
12 and I'm not sure if Mr. Miller wants to call him or if ya'll  
13 had rested your case and want me to call him, I'll -- okay so  
14 if you're ready to proceed, Your Honor, ---

15 THE COURT: Yes, ma'am.

16 MS. WHITE: --- the State would call Jimmy Hatcher to the  
17 stand.

18 THE COURT: C'mon around, sir.

19 JAMES E. HATCHER, having been  
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MS. WHITE:

22 Q. Mr. Hatcher, if you could just state your name for the  
23 record.

24 A. James E. Hatcher.

25 Q. And gi -- if you could, give us a little background on

1       how you were involved with this case with Mr. Wilbanks.

2       A.    Yes, I was appointed to represent Tim, I was employed at  
3       the time at the Spartanburg County Public Defender's office  
4       and I was appointed in 2003.

5       Q.    Okay. And at that point how long had you been practicing  
6       law, do you recall?

7       A.    I was licensed in 1989.

8       Q.    And had most your work been in criminal defense or civil  
9       or ---

10      A.    Primarily I'd started in the military and that was, that  
11      was 90 percent criminal work and then I worked for the  
12      solicitor's office in two different counties and then I went  
13      to the public defender's office beginning in 2000.

14      Q.    Okay, and obviously it's been a long time since you  
15      handled the case, I know you've had a chance to review your  
16      file and then also review the testimony that was offered, do  
17      you recall the facts of the case and in any meetings with  
18      Mr. Wilbanks in discussing strategy?

19      A.    Yes, I I met with Tim at the jail where he was being  
20      held.

21      Q.    And at the time do you recall what your discussions were  
22      involving any defense to this case?

23      A.    Yes, Tim was adamant from the first day that I met him  
24      that this was all a mistake and that the investigators had  
25      jumped to conclusions and that he was -- had been erroneously



1 arrested and charged.

2 Q. And so at that point in discussing with him did ya'll  
3 develop a strategy for a defense?

4 A. Yes, it was essentially a case that would revolve around  
5 attacking the eyewitness testimony and that basically they had  
6 gotten their ID wrong.

7 Q. And in mentioning ID Mr. Wilbanks raised the issue I  
8 believe of having a couple of issues regarding the  
9 identification in this case and one point there was a photo  
10 lineup in which the eye witnesses, two I believe, one  
11 immediately, one after a little bitta time identified or  
12 picked Mr. Wilbanks out of a lineup; do you recall any  
13 conversations or any review of that?

14 A. Yes, Tim and I went over a lot of things in the case but  
15 one of the things that we focused on was the photo lineup that  
16 had been presented to three different eyewitnesses.

17 Q. And in your experience or practicing law, did you find  
18 any issues with the lineup? Were there any issues that you  
19 felt you would be able to raise at trial?

20 A. Well just some, just the normal arguments when it comes  
21 to suggestiveness and it was a as I recall a "six-pack", what  
22 we call a "six-pack lineup" so that it limited the witnesses.  
23 One of the things I tried to establish at trial was that they  
24 were not given the opportunity to leaf through a a mug shot,  
25 ya know, an array of mug shots, rather they were just

1 presented with this one "six-pack" and I as I recall the  
2 photograph of Tim was not necessarily a current photo so we we  
3 focused on some of those things.

4 Q. Okay. Were there any -- did you believe that -- I guess  
5 other than attacking it at trial, was there anything with the  
6 identification that you felt was improper that you really felt  
7 that ya'll would be able to get it I guess suppressed?

8 A. Well right, I'm sorry. Yeah, we we initially attacked it  
9 in the, in a suppression hearing to start with and what I  
10 believe my main focus was that I got the detective to  
11 acknowledge that he had in fact received very specific  
12 descriptive material specifically that being that the robber  
13 had scars on his face and Tim and I thought that was  
14 particularly noteworthy since he doesn't have scars on his  
15 face and we zeroed in on that and I in fact got the detective  
16 to acknowledge that I think his position was that he had  
17 prepared the "six-pack" before he got that information but  
18 then he finally agreed with me that once he had that  
19 information he did not do anything to improve the lineup to  
20 make it consistent with the eyewitness testimony and based on  
21 that I moved for the lineup to be suppressed.

22 Q. And was that motion successful?

23 A. Unfortunately not.

24 Q. And in fact I believe he was picked out by one of the  
25 eyewitnesses immediately, is that correct, by -- on the lineup

1 I guess originally?

2 A. I believe it was, it was a a young man that was the first  
3 one to be called in and if I'm not mistaken he actually  
4 pointed at another person in the lineup and then with the h --  
5 the detective had a little conversation with him, so to speak,  
6 and and asked, basically suggested that he take another look,  
7 maybe not worry about things like hair and ultimately that  
8 that witness then we were told picked Tim's photo. I believe  
9 the next witness to come in was a young lady and I think at  
10 first, I think at first she said she didn't see the the  
11 suspect in the lineup and then again being encouraged to look  
12 at it a little longer she selected Tim's photograph and then  
13 the last supposed eyewitness came in and basically said he was  
14 in the back of the store and he didn't see anybody so I I  
15 think that fairly summarizes what the witnesses said.

16 Q. Okay, and did you have the chance to cross-examine each  
17 of those witnesses during the trial?

18 A. Yes, I did.

19 Q. And were you able to bring out some of that I guess  
20 uncertainty perhaps with identification?

21 A. Yes, well particularly with -- well both with the the man  
22 who had originally picked someone else, he acknowledged that  
23 on the stand as I recall and then the young lady. Again, that  
24 she was the one that was the source of, she was the one that  
25 was closest to the storefront and had direct contact with the



1 person robbing the store and from the very beginning her  
2 description to 911 was this man had scars on his face and I of  
3 course elicited that from her. I I actually had Tim, I --  
4 the judge allowed me to have Tim come up and actually stand,  
5 of course she was in the witness box and I was able to have  
6 Tim stand as close as she said he was on that day and of  
7 course the jury could see that Tim did not have any scars on  
8 his face and I felt like that was pretty effective  
9 testimony.

10 Q. Okay. In regards to victims' statements, Mr. Wilbanks  
11 has alleged that that some of the victims' statements he  
12 believed may have been forged or the signatures were forged  
13 and that there was some original statements presented at  
14 preliminary hearing that were not the statements presented; do  
15 you have any knowledge as to that? Do you recall any  
16 conversation about that?

17 A. I think what he's referring to is the fact that and I I  
18 may not have gotten that directly on point out during  
19 testimony but I did get from the detective that a lot of,  
20 lotta the things written and attributed to witnesses were in  
21 fact the handwriting of the detective and and a course in some  
22 jurisdictions or departments it's not unusual for a -- for an  
23 officer to summarize someone's statement and then ask them to  
24 adopt that and sign it but they acknowledge that these  
25 statements had been written by an officer, not by the person

1 themselves. Now I was not a -- I was not successful in in  
2 uncovering anything in the way of a forged signature but I  
3 don't -- that may have been a failure on my part, I just  
4 wasn't able to to find that.

5 Q. Okay. There also the same issue was raised in regards to  
6 the actual incident report. I believe there was an incident  
7 report, some supplemental incident reports and an allegation  
8 perhaps that there was some different handwriting and  
9 signatures, is that the same type situation or ---

10 A. Yes, and that's actually what I I do recall being able to  
11 establish through testimony and I think it may have been  
12 Detective Bradley but he acknowledged that as the, as the  
13 senior, I don't know what they call themselves, but like the  
14 senior officer in charge he had the chance to review some  
15 reports and in fact prior to presenting this to a magistrate  
16 for a warrant he had in fact filled some things in and I was  
17 able to get him to acknowledge that yes, that was -- there  
18 were some changes in there, the -- all of this wasn't  
19 originating from the original writer.

20 Q. Okay. Going back to identification real quick,  
21 Mr. Wilbanks raised also that he wished that there had been  
22 DNA analysis done on the denim shirt that was found in the  
23 hotel room where he was arrested; ---

24 A. Right.

25 Q. --- you recall any conversation or any thought in regards



1 to doing that?

2 A. I I do know that we were concerned about the issue of the  
3 clothes that Tim had been wearing and the fact that that that  
4 we wanted to make sure that we felt that might be significant  
5 at trial and it was interesting to me that in the list of  
6 evidence that the solicitor had provided to me as part of  
7 their responsibilities under discovery rules that there was no  
8 mention of these clothes and I knew that Tim had been, ya  
9 know, taken under arrest to the jail so I felt like the last  
10 person to have control of those clothes would be law  
11 enforcement but it was actually through an investigator from  
12 the public defender's office that we were actually able to  
13 locate those clothes and ultimately I thought one of the more  
14 bizarre moments in the trial was the solicitor's office  
15 actually served a subpoena on me when they finally figured out  
16 that they had overlooked the clothes and I wound up having to  
17 turn the clothes back over to them but our, I think the issue  
18 we were concerned about was Tim's position was I think that he  
19 had a white shirt that was his work shirt from the dealership  
20 he worked at and and then there was this other shirt, it was a  
21 denim shirt I think, and it was oversized at least for Tim and  
22 that's the sh -- and but anyway at the scene where he was  
23 taken under arrest both shirts were at that location and for  
24 whatever reason the the arresting officers put that oversized  
25 denim shirt on Tim and he protested I think early on that that

1 wasn't his shirt. Now again maybe a failure on my part, I  
2 wasn't able to do anything beyond explore under cr -- on  
3 cross-examination that there were these other clothes but no,  
4 I did not, I was not able to establish anything through DNA.  
5 Q. And he did mention also analysis in regards to detergent  
6 on the shirt to identify that that was not the shirt, the  
7 detergent that who -- he or his family used; to your  
8 understanding would that be anything that would have crossed  
9 your mind or worked I guess in this case?

10 A. Tim Tim was very active in in assisting me in his defense  
11 which, ya know, when you have someone who's who's helping you  
12 with another setta eyes it's it is helpful but I can't say  
13 that I thought every one of his suggestions were on, were on  
14 point and it may have just been a disagreement between he and  
15 I but I did not see any significant result, ya know, on the  
16 case by testing for detergents.

17 Q. Okay. Also in regards to identification there was a  
18 stolen vehicle that kind of led to that was I guess identified  
19 as the car that had been used in the armed robbery, that's  
20 kind of what led to ultimately Mr. Wilbanks' arrest I believe  
21 locating the car at the, at the motel, talk to me about the  
22 the fingerprints. He's raised an issue that the car was  
23 processed or ya'll didn't think it was processed at first then  
24 you found out it was; do you recall any issue with that?

25 A. What I recall is that what I, what I perceived as being

1 sloppy, sloppy handling of the evidence by the, by the police  
2 in that they acknowledged in testimony that they hadn't done  
3 any forensic testing on the car, that it was not immediately  
4 treated as a crime scene, it was not inventoried, it was not  
5 fingerprinted and a lotta times from a defense standpoint that  
6 that is actually more helpful to me than in the sense that it  
7 it helps me show the weaknesses of their case and I know that  
8 I was able to establish that. Now as to whether, and I  
9 believe the detective acknowledged that they never took  
10 custody of the vehicle, it was taken through some routine  
11 method because someone they know who the car belonged to and I  
12 think they were just in the process of handling it in a, in  
13 more of a normal way whether -- rather than treating it as  
14 significant evidence. Whether or not it was ultimately  
15 fingerprinted I can't remember.

16 Q. Okay. There were a couple of other issues about video of  
17 the motel or where the car was parked; was that anything that  
18 was introduced into evidence to your knowledge, a video or ---

19 A. What I recall is by about the last day of trial we were  
20 able to get a video. The judge agreed to let us play this  
21 video. I don't know if it was offered actually by the State  
22 or by us. We knew the tape existed, it seemed like we'd had  
23 to do some back and forth to finally get it, ya know,  
24 displayed or shown. I think that the detectives' position all  
25 along was that they didn't have any video and they didn't have



1 any audio. Through cross-examination I think and actually in  
2 the *Jackson v. Denno* hearing I finally figured out that yeah,  
3 there was a a video running because it was stationary video on  
4 on one of the patrol vehicles that I think when they took Tim  
5 into custody initially it just kicked on automatically, I d --  
6 I I'm not sure but there mighta be -- but then they said the  
7 audio wasn't working right so they didn't think the video was  
8 of any significance but we ultimately played it. Tim thought  
9 there were some things of significance in the vi -- video, I,  
10 ya know, we were trying to establish that this vehicle was  
11 located some distance from the room he was in and we didn't  
12 know how on earth they were making this leap of logic as to  
13 him being the driver of that vehicle 'cuz, ya know, he was  
14 just one occupant of who, ya know, however many occupants in  
15 this hotel.

16 Q. Okay. In regards to failure to call any witnesses, do  
17 you recall Mr. Wilbanks telling you that there were any  
18 witnesses that he wanted you to call that you did not call on  
19 his behalf?

20 A. Well, I recall that we searched in vain for one or two  
21 people that he told us were significant and I think we were  
22 dealing at least with one of 'em with a street name and the  
23 other one I think we had a full name but we never could track  
24 that person down either so was I -- I wasn't successful in  
25 producing all the people that he said, ya know, could be

1 helpful to us but I certainly tried as, ya know, with all the  
2 resources I had to track these people down and so yeah,  
3 there's probly one or two that he wanted there that wasn't.

4 Q. Okay, and talk to me about the jury charges. At one  
5 point yet there was some discussion on the record about a  
6 strong armed robbery charge versus an armed robbery charge; do  
7 you recall that?

8 A. Yes, of course Tim was facing the armed robbery charge.  
9 I know that as I recall through testimony of one of the  
10 officers we were able to establish that in fact I think the  
11 warrant may have been originally drafted up as strong armed  
12 and the officer acknowledged that but then of course it was  
13 indicted as armed robbery and that's what we were at trial  
14 for. The first indication that strong arm might be a  
15 possibility was I believe at -- when the State rested and  
16 before the resumption of or the presentation of the the  
17 defense case during a break the solicitor, Mr. Gowdy, actually  
18 came to me and at that point offered us, he told me he was  
19 prepared for Tim to be off -- he was prepared to offer Tim  
20 strong armed robbery if we would consider a plea and I asked  
21 him for a moment to be able to discuss that with Tim and I I  
22 brought him the offer and as I do with with any client and  
23 particularly when we're in trial I tell him what the offer is,  
24 I tell him my opinion of it, ya know, we talk about where  
25 we're at, how the case looks, the pros and the cons of this



1 offer because of course if he pleads he's looking at some jail  
2 time and Tim's reaction to this offer was, Well, no I'm not  
3 interested in strong armed robbery and in fact I have an offer  
4 for the solicitor, you can go tell him I don't want strong  
5 armed robbery and my offer is if he agrees to dismiss the case  
6 right now I'll agree to not pursue civil charges against  
7 him.

8 Q. So at that point obviously you felt that that was a a no  
9 go on the, on the offer and ---

10 A. Yes, I knew how Tim felt ---

11 Q. Yes.

12 A. --- about that offer at that point. Now and then a  
13 course I think you were asking me about jury charges and Tim's  
14 position as I recall did not change from his feeling about the  
15 offer from the solicitor and he he wanted to go up or down on  
16 on the s -- on the armed robbery.

17 Q. And in fact how did you feel, I mean, did ya'll -- how  
18 was your feeling about the case at that point, if you can  
19 recall, in regards ---

20 A. Well, ---

21 Q. --- to your chances?

22 A. --- well not that you ever feel super confident in these  
23 situations but I felt like we had established a lotta good  
24 points and I felt like we had a fighting chance. I knew the  
25 fact that the solicitor comes to me with this offer in the

1 middle a trial tells me that he must think that it's a  
2 questionable case and so at the same time of course it's my  
3 responsibility to advise the client of the offer and and to  
4 make sure that he understands that's something he should  
5 consider.

6 Q. Okay. And the facts of the case in addition to we've  
7 talked about the stolen vehicle, the clothing, the  
8 identification, Mr. Wilbanks gave a statement that was  
9 essentially considered a confession, is that right?

10 A. That's correct.

11 Q. And was that entered? You mentioned a *Jackson v. Denno*  
12 hearing, did ya'll hold a hearing on that statement?

13 A. We did and I I argued that that statement should be  
14 suppressed. I thought we were able to establish fairly  
15 clearly that the statement was actually written by the  
16 detective, he acknowledged that; I thought we were also able  
17 to establish fairly clearly that Tim was under fairly  
18 significant dure -- duress at the time he was being questioned  
19 and and I I think my statement was something to the effect of  
20 Tim woulda probably agreed to just about anything at that  
21 point when he was in custody to try to get himself out of this  
22 this situation and but unfortunately the judge did not see it  
23 our way.

24 Q. And that was presented to the jury as ---

25 A. Yes.

1 Q. --- an additional -- okay.

2 A. Yes.

3 Q. Alright.

4 MS. WHITE: I believe that is all the questions I have at  
5 this time, Your Honor.

6 MR. MILLER: If it please the Court, Your Honor.

7 CROSS-EXAMINATION BY MR. MILLER:

8 Q. Mr. Hatcher, we thank you for being here this this  
9 morning, glad you're back in South Carolina.

10 A. Thank you.

11 Q. I'm gonna try to go in a a good sequence that may mirror  
12 what the Attorney General's office has presented this morning  
13 and bear with me as I review my notes and try to move this  
14 along. First issue had to do with the photo lineup and I  
15 understand that you argued that that photo lineup was improper  
16 and you brought out an issue of of the scarring on Tim's  
17 face, ---

18 A. Right.

19 Q. --- did you also bring out the issue that the photograph  
20 that was used of Tim was several years old and that Tim was a  
21 lot thinner at the time that this offense was alleged to have  
22 occurred compared with the photograph?

23 A. I remember that issue being one we were conscious of, I  
24 can't tell you how well I established that.

25 Q. Okay. Wasn't there however a more important issue with

1 regard to the phot -- photo lineup as regards a photo lineup  
2 as opposed to a live lineup?

3 A. Yes.

4 Q. And that wasn't argued at trial, was it?

5 A. Right.

6 Q. And there was an issue that Tim felt was real important  
7 that related to a live lineup and that had to do with a very  
8 serious eye condition known as a "lazy eye".

9 A. Right.

10 Q. Tim has a very pronounced lazy eye, doesn't he?

11 A. Right.

12 Q. And in none of the witnesses' statements whether written  
13 by officers or written by the the witnesses did that lazy eye  
14 come into play at all, did it?

15 A. If if you're asking me did that, did did that disclosure  
16 come out at trial, it certainly did. It c -- I think it came  
17 out both through the suppression hearing as well as during the  
18 the case in chief. I think initially through Tim's testimony,  
19 I had him testimony -- I had him testify for the limited  
20 purposes of the suppression hearing and I believe he mentioned  
21 it at that point and then I think it also came out through his  
22 father's testimony.

23 Q. But what I'm asking ya is but you did not criticize the  
24 State using a photo lineup as opposed to a live lineup that  
25 would have potentially shown that significant eye abnormality,



1 the lazy eye.

2 A. Correct.

3 Q. Okay. And you would acknowledge that through a meeting  
4 with Tim that it, that it's actually a very prominent feature,  
5 is that correct?

6 A. That's correct.

7 Q. Okay. Now with regard to processing the stolen vehicle,  
8 did it occur to you that the State did not want to present  
9 that as a part of their case because it actually hurt their  
10 case?

11 A. Which which fact?

12 Q. The the fact that the stolen vehicle was not entered into  
13 evidence, the fact that there were fingerprints on the vehicle  
14 but they didn't belong to Tim.

15 A. Yeah, I I I thought I dwelt on that fairly significantly  
16 during the case.

17 Q. And in fact Tim's prints were not on that car, were  
18 they?

19 A. That was never shown.

20 Q. Now let's go into the victim statements and then the  
21 officer's incident report, first with regard to the victim  
22 statements. I believe Alexandra Wolf handled this case at the  
23 preliminary, is that correct?

24 A. That's standard procedure ---

25 Q. Yes, ---



1 A. --- at the public defender's office.

2 Q. --- and did you become aware that Tim believed the  
3 statements that he was shown by you as you were preparing the  
4 case were different than the statements that he had been  
5 presented by Alexandra Wolf at the preliminary hearing, do you  
6 remember that?

7 A. Like I, like I testified with the Attorney General, Tim  
8 was was very active and and very diligent in in keeping me  
9 abreast of things he was concerned about and I I do recall  
10 that that came up at some point but again, it wasn't anything  
11 that that I was able to establish.

12 Q. Okay. And there was no attempt to determine if in fact  
13 there were earlier statements that Tim woulda would've seen at  
14 the time of the preliminary hearing that were different from  
15 the statements that were actually ultimately used in in the,  
16 in the prosecution.

17 A. I can't recall specifically. I I think that it wa --  
18 when questions like that came up because Ms. Wolf is the one  
19 that handles the preliminary hearings, I, my my normal  
20 procedure would have been to have a conversation with her,  
21 with her about it and see if she ---

22 Q. Yes.

23 A. --- had any -- anything that seemed unusual to her but I  
24 can't tell you specifically.

25 Q. I think there was an issue also that Tim brought to you

1 and that had to do with probly the most important witness and  
2 that was Ms. Price and the fact that there was an  
3 inconsistency as to which name she actually went by as opposed  
4 to which name was signed on the witness statement, the Amy  
5 Price versus Casey Price. Do you recall that you did not  
6 bring that out in Tim's defense at the time of the trial  
7 either in cross-examining Ms. Price or any other point in  
8 arguing this case?

9 A. Well it it es -- I guess it escaped me then and escapes  
10 me now as to ---

11 Q. I believe they considered it in a -- at all points they  
12 they listed her as a witness Casey Price but the statement was  
13 signed Amy Price rather than Casey and didn't Tim bring that  
14 to your attention that possibly he was concerned that that  
15 wasn't Ms. Price's signature because the name was different,  
16 it was signed Amy but yet she seemed to go by the name Casey  
17 during the trial and even before the trial?

18 A. Well I I'm sure he, I'm sure he certainly did bring that  
19 to my attention, I I -- it just -- I I I guess I I missed his  
20 point. I I know that Casey was present to testify and she  
21 identified herself as the one who was working at the Papa  
22 John's, she identified herself as the one who was the --  
23 interacted with the suspect and at no point did I get any  
24 indication that there was some other Casey Price out there.

25 Q. Also, the issue of scarring I believe you've already

1 mentioned. I believe she alleged that the suspect had a  
2 military-style haircut and there were specific car details  
3 given, I believe a 92 Buick LeSabre.

4 A. Right.

5 Q. Those were things that actually ended up in the  
6 newspaper, didn't they?

7 A. I believe so, ---

8 Q. There was a newspaper article ---

9 A. --- correct.

10 Q. --- that gave those but then the statement that she gave  
11 didn't have those those details in it, did it, did it?

12 A. Right, I I think the newspaper description also referred  
13 to an older white male, ---

14 Q. Um-hum, ---

15 A. --- things like ---

16 Q. Exactly.

17 A. --- that. Yeah.

18 Q. But do you feel like those were brought out though, those  
19 inconsistencies at trial what was alleged to have been a  
20 description of the defendant or the the suspect versus obvious  
21 differences in in in Tim's appearance?

22 A. But like I said I I think certainly through through  
23 Ms. Price, I I felt like I had zeroed in on that about as well  
24 as I possibly could including having Tim come up and stand in  
25 front of the jury so everyone could get a good look at him and

1 see that he didn't have any scars.

2 Q. And I believe the same applied to Mr. Serig who I believe  
3 was another one of the witnesses and then ---

4 A. Right.

5 Q. --- to a Mr. Carr and I believe Mr. Carr actually didn't  
6 pick Tim in the photo lineup, did he?

7 A. Right.

8 Q. Now going to the incident report you did mention, of  
9 course backing up, Mr. Hyde or Officer Hyde prepared the  
10 initial report, correct?

11 A. I believe so, yes.

12 Q. And I believe Officer Hyde listed strong armed robbery  
13 and did not list as -- a -- the name of a suspect, did did  
14 he?

15 A. That's my -- that's what I recall.

16 Q. And if I'm not mistaken wasn't it outside the presence of  
17 the jury that you brought to the Court in pretrial the  
18 inconsistency between Hyde's statement and then Bradley going  
19 and altering that statement ultimately putting Tim's name in  
20 as if they knew from the very beginning that someone was  
21 claiming this was Tim Wilbanks, knew it was Tim Wilbanks and  
22 then erasing the word "strong" from that incident report?

23 A. Correct.

24 Q. That was done outside the presence of the jury, wasn't  
25 it?



1 A. Correct.

2 Q. Unfortunately, am I correct that that was not brought out  
3 in the jury's presence during the trial of this case?

4 A. I can't say right now whether or not I was able to hit  
5 every single point at trial that I did in in the suppression  
6 hearing.

7 Q. Okay, and in fact there was an issue and what mighta been  
8 a very serious issue of Officer Bradley improperly altering  
9 that report so that then when it was presented to the  
10 magistrate it was as if they knew that Tim Wilbanks was the  
11 su -- suspect and that it was an armed robbery case rather  
12 than what the officer who prepared the original report put  
13 which was suspect blank and strong armed robbery ---

14 A. Right.

15 Q. --- and that wasn't presented to either the Court or to  
16 and certainly more important to the jury in considering the  
17 veracity of that report.

18 A. I think at least at the suppression hearing I was able to  
19 establish through Bradley that he, that he had done some  
20 changes prior to taking this to the, to the magistrate for a  
21 warrant.

22 Q. Yes, sir, but but trying to show the lack of honesty on  
23 Bradley's part or trying to hurt his credibility, that didn't  
24 go to the jury, did it?

25 A. Maybe not on that specific point ---



1 Q. Yes.

2 A. --- but I can tell ya by the time officer Bra -- or  
3 Detective Bradley got off the stand in front of the jury, I felt  
4 like we had minimized his credibility.

5 Q. But not to the point of him possibly falsifying the  
6 incident report.

7 A. That may -- I may not have hit on that; I hit on some  
8 other things.

9 Q. Now the issue of the video that really was a peculiar  
10 part of this case, wasn't it?

11 A. Yes.

12 Q. And in fact the State's case maybe didn't hinge on but an  
13 important part of the State's case was that this car, this  
14 stolen vehicle was parked I think within 15 feet right in  
15 front of the the room where Tim was arrested, is that  
16 correct?

17 A. Correct.

18 Q. Okay. And once you finally determined that there was a  
19 video because there was a stationary camera rolling, ---

20 A. Right.

21 Q. --- it was clear that there was no car parked right in  
22 front of that -- the hotel room, wasn't it?

23 A. Correct, I, what I recall establishing actually through,  
24 may have been through Captain Hardy was that, was that I got  
25 he agreed that that there was not a vehicle right in front of

1 Tim's room, that in fact this vehicle that was reported stolen  
2 was was some distance away.

3 Q. And and did the State ever acknowledge that that was  
4 wrong, that the car wasn't -- once that video came to light  
5 and the video was played, did the State ultimately acknowledge  
6 that that they they were wrong, that the car was parked some  
7 distance in in in a lot away from the motel room?

8 A. I d -- I think through their ini -- original testimony I  
9 don't think they ever tried to place that vehicle right in  
10 front of his room, I think they always placed it, ya know,  
11 some, a little distance away but I think what we established  
12 was that they had no clear connection linking Tim to that  
13 vehicle.

14 Q. Okay. Do you remember that an Officer Bledsoe  
15 transported Tim from the scene at the motel to the jail?

16 A. I know he was transported, I didn't ---

17 Q. Okay.

18 A. --- know who ---

19 Q. Okay, ---

20 A. --- or I don't ---

21 Q. --- so ---

22 A. --- recall.

23 Q. --- you were not aware that -- who that person was or  
24 maybe you just don't recall today?

25 A. Yeah, I'm sure I re -- I'm sure I remembered in ---

1 Q. At the time ---

2 A. --- 2003.

3 Q. Okay. You didn't call the officer who transported Tim  
4 from the motel room to the jail as a witness in this case, did  
5 you?

6 A. Apparently I didn't.

7 Q. And that o -- that that officer would've certainly been  
8 able to establish where the car was located because he was  
9 there at the scene transporting Tim and actually I guess that  
10 was the video that was runnin' at the time, he was the officer  
11 in the vehicle that was transporting Tim.

12 A. Right, right but on the issue of where the vehicle was  
13 located, I thought we, my recollection is we clearly  
14 established that through at least one if not several officers'  
15 testimony.

16 Q. But didn't all of those witnesses testify that the  
17 vehicle was right in front of the room, I I think the transcript  
18 may indicate within 15 feet of the room wherever that mighta  
19 been?

20 A. Right. I guess that that may be I I'm getting the  
21 impression now that the point I thought we were in agreement  
22 on we're not in agreement. I I thought it was fairly well  
23 established that when I said the vehicle was not right in  
24 front of the room, it was still, it was some distance down but  
25 it wasn't very far away.

1 Q. Right.

2 A. Now I -- so I did not get any concession from them at any  
3 point that it was some further distance but I thought they  
4 acknowledged it it wasn't right in front of the room.

5 Q. But in fact an Officer Bledsoe, the officer who  
6 transported Tim from the motel to the jail, could have  
7 actually shown the the prosecution was wrong in that the  
8 vehicle that they claimed was a stolen vehicle by Tim was in  
9 fact not close to the room at all.

10 A. I I can't speak to that.

11 Q. Okay. You remember the Interstate Wrecker was involved  
12 because that's where the vehicle came from?

13 A. Right.

14 Q. Do you recall that the folks at Interstate Wrecker, the  
15 Parrish family, actually knew my client, ---

16 A. That's correct.

17 Q. --- had known him for years, ---

18 A. That's correct.

19 Q. --- actually had a a a good relationship with him,  
20 thought thought a lot of Tim? Well you didn't call the  
21 Parrishes to testify in this case either, did ya?

22 A. I don't recall.

23 Q. Okay. And in fact I believe that Mr. Pat Parrish woulda  
24 been the person who moved that stolen car from the motel and  
25 he could've also testified as to the placement of the car in



1 relation to the room and whether there really was a connection  
2 between the two.

3 A. Okay again, I I I felt like we effectively established  
4 that that car was not in front of Tim's room. I did not want,  
5 I didn't wanna make any connection between this car and Tim, I  
6 did did not feel like that would help us in the least and when  
7 I was able to get them to acknowledge this car was not in  
8 front of his room, I felt like our job was done. Calling  
9 people who would say Tim knew them and this was their vehicle  
10 to me would not help.

11 Q. Now I believe there was an issue also as to  
12 identification of Tim at the motel itself, di -- and do you  
13 remember that?

14 A. Yes.

15 Q. Okay. Do you remember that Officer Bradley testified  
16 that he got Tim's name from the the person who owned the Sun  
17 and Sand Motel?

18 A. Yes.

19 Q. Do you remember ever bringing out an inconsistency  
20 between that testimony of Officer Bradley and anyone else's?

21 A. I remember having a back and forth about how they first  
22 got, ya know, how how did Tim's name come up to start with and  
23 and I remember and I don't know which officer it was but there  
24 was some testimony that they'd gotten this name from the Sun  
25 and Sand, beyond that I I can't today tell you how ---

1 Q. Yes.

2 A. --- I ---

3 Q. Yes, yes.

4 A. --- if I went further.

5 Q. In fact Officer Turner contradicted Officer Bradley in  
6 that Officer Turner said that they got Tim Wilbanks' name from  
7 the people who knew him at the Interstate Wrecker Service, do  
8 you not recall that?

9 A. I believe -- yes, I believe there was some inconsistency  
10 there.

11 Q. Okay, and in fact you didn't argue that inconsistency to  
12 the jury in this case, did ya?

13 A. I may not have hit that one.

14 Q. And you did not call Detective Hyde to potentially  
15 impeach the report that Bradley had altered.

16 A. I don't recall.

17 Q. That would've showed in fact to the jury that Officer  
18 Hyde didn't have a name and that Officer Hyde believed that it  
19 was a strong armed robbery case rather than an armed robbery  
20 case whoever the suspect woulda been.

21 A. Right, right. There were lots of inconsistencies in this  
22 case, I can't tell you that I hit every single one of 'em, I  
23 did hit a lot of 'em.

24 Q. Yes. Now the issue of the lesser included offense I  
25 understand your position that as the trial was going on that

1 as the defendant when we came to that point at the beginning  
2 of his case the offer was made and Tim rejected that offer ---

3 A. Correct.

4 Q. --- but when ya'll got to the end of this case you were  
5 the attorney, correct, and ---

6 A. Correct.

7 Q. --- and Tim was the defendant ---

8 A. Correct.

9 Q. --- and when it comes to making decisions as to whether a  
10 jury charge should be requested of the trial judge or not,  
11 you're the lawyer.

12 A. I, maybe I'm erroneous on this but my position has always  
13 been that I'm the lawyer but the guy sittin' next to me is  
14 gonna be the one servin' the time and so I take my client's  
15 positions on that very seriously and I can tell you that  
16 particularly in this case just the day previous to this or  
17 that morning Tim had asked the judge for an opportunity to  
18 address the Court and he launched into a long presentation on  
19 all of the things that I was doing wrong and and I didn't know  
20 if I was gonna be fired at that point but the judge heard him  
21 out and then we continued on. There were some things that Tim  
22 and I disagreed about but I believe we were of one mind on the  
23 issue of going up or down on armed robbery.

24 Q. Do you recall that Judge Patterson actually was very  
25 concerned when you asked him not to charge strong armed



1 robbery, ---

2 A. I remember he ---

3 Q. --- questioned it at that time?

4 A. I don't know, I don't know if the -- if my impression was  
5 he was very concerned; I remember we went through some  
6 analysis and the judge was comfortable with the, with the  
7 ultimate decision to not charge it but again, I may be  
8 erroneous in this but my, a lot of my position on that was  
9 based on what Tim's feelings were about it.

10 Q. But do you not recall that because there was the issue of  
11 possibly no constructive possession from the testimony that  
12 was that Tim had his hands in the front of his pants that  
13 Judge Patterson was concerned that that lesser included  
14 offense ought to be charged and at that point Tim was  
15 comfortable with that being charged?

16 A. Hmm.

17 Q. Do you not recall that?

18 A. No, and I can tell ya at least in in the cases where I  
19 was in fronta Judge Patterson if Judge Patterson was  
20 uncomfortable about sumtin', I -- it was never my experience  
21 that I could override his position on something; if he thought  
22 something should be done, it was pretty much done.

23 Q. Was ultimately your decision to ask Judge Patterson not  
24 to charge the lesser included offense because you believed  
25 enough evidence had been presented to contradict the State's



1 case and you believed that Mr. Wilbanks was gonna be found  
2 innocent of this charge?

3 A. That was certainly my hope but also just from a legal  
4 standpoint it seemed rather, it seemed rather inconsistent to  
5 me to we'd spent the entire case arguing that they got the  
6 wrong guy when -- and our theory was never that, Oh, well  
7 yeah, that was us but we weren't brandishing a weapon.

8 Q. But whether it was Tim or not the issue of whether the  
9 evidence that were presented of a weapon that really had come  
10 into dispute, hadn't it, there really -- there rea -- whether  
11 it was Tim ---

12 A. Right.

13 Q. --- Wilbanks or not --

14 A. Right, ---

15 Q. --- ya know, and ---

16 A. --- and this this ---

17 Q. --- and whether a jury would determine it was Tim or not  
18 from the the evidence presented, ---

19 A. Right.

20 Q. --- clearly there was an issue of whether there was a  
21 weapon on whoever the defendant should have been or whoever  
22 the suspect was was still there.

23 A. Right, and it may have just been poor strategy on my part  
24 but again, I felt like we had effectively established that  
25 they had the wrong guy so I I just, to me whether or not they

1     also carried through on on clearly establishing a weapon, I  
2     mean, that that was never our focus but ---

3     Q.    You did focus on that, however, when you moved for a  
4     directed verdict, do you recall that?

5     A.    Yes, I'm I'm sure that in seeking to diminish the State's  
6     case that that woulda been one of the things I hit on.

7     Q.    Begging the cult's -- court's indulgence for just a  
8     moment. At no time did you ask the Court to consider  
9     dismissing this case based upon what was believed to have been  
10    falsification of that incident report by Bradley, is that  
11    correct?

12    A.    That's correct.

13    Q.    And and wasn't it obvious that the original report before  
14    being given to the magistrate had been altered?

15    A.    Well, when we use the word "altered", I I don't know if,  
16    maybe it didn't didn't strike me as in the same way it did Tim  
17    just that knowing that the way reports get routed up a chain a  
18    command that that maybe there was some adjustments made to it  
19    but I I didn't view it as some -- something nefarious or or  
20    sinister.

21    Q.    Well they did white out the word "strong".

22    A.    And I think we we elicited that.

23    Q.    And it wasn't initialed as if they wanted everybody to  
24    understand that they had altered the original report.

25    A.    Right, and I think I asked 'em about that.

1 Q. And and in fact when they added Tim's name it still said  
2 that the suspect had scars on the face. You didn't bring that  
3 out, did you?

4 A. Bring that ---

5 Q. Not to the jury. In front of the judge in pretrial you  
6 brought it out but not in front of the jury.

7 A. Whether or not I zeroed in on that the word "scarring" in  
8 the report, I can tell you that we clearly established to the  
9 jury that the allegation was that this suspect had scars on  
10 his face and I took the opportunity a -- once again to present  
11 Tim as close as I could get him to the jury box so that  
12 everyone could get a good look at him.

13 Q. Yes, and just to kind of wrap it up at this point, you  
14 didn't call Officer Hyde to testify and you didn't bring out  
15 the fact that the State didn't call Officer Hyde to testify  
16 either, isn't that correct?

17 A. If you're telling me that, I I'll take your word.

18 Q. You don't recall?

19 A. Again, I tried this case in 2003, ---

20 Q. I understand. I understand.

21 A. --- I don't recall.

22 Q. But you recall that an officer prepared the original  
23 report and then Officer Bradley made some changes or completed  
24 it, however you want to characterize it.

25 A. Right, right, I think we did -- I discussed that with

1 Officer Bradley on the witness stand.

2 Q. Okay.

3 BY MR. MILLER: Your Honor, I believe that's all all I  
4 have. Thank you, sir, very much.

5 THE COURT: Any redirect?

6 MS. WHITE: Just briefly, Your Honor.

7 REDIRECT EXAMINATION BY MS. WHITE:

8 Q. Mr. Hatcher, I just want to to follow up on a quick  
9 question with you. Generally, when you are representing a  
10 client, you said that you actually give them your opinion,  
11 your advice, at that situation do you make the decision for  
12 the client as to whether or not they're gonna plead, what  
13 the -- what they wanna do in regards to the case?

14 A. No.

15 Q. So any decision in regards to a plea offer, anything that  
16 was goin' forward on, you relied on your client as the client  
17 to make his own voluntary decision?

18 A. Absolutely.

19 Q. In regards to a jury charge for strong armed robbery in  
20 your experience whether it's a drug case of -- if you've got a  
21 defense of innocence, do you generally ask for a lesser  
22 included charge?

23 A. Not in my experience.

24 MS. WHITE: That's all I have, Your Honor.

25 THE COURT: Thank you, sir, you may step down.



MOTIONS AND MATTERS

1 (Whereupon, the witness left the stand.)

2 MS. WHITE: The State has no other witnesses, Your Honor.

3 THE COURT: Anything in reply?

4 MR. MILLER: Nothin' in reply, Your Honor. Thank you,  
5 sir.

6 THE COURT: Alright, my law clerk informs me ya'll made a  
7 request to present briefs, is that correct?

8 MR. MILLER: Just a summary that instead of doing a  
9 closing argument to save time this morning, Your Honor.

10 THE COURT: Alright, can ya'll have 'em to me in about  
11 ten days?

12 MR. MILLER: Absolutely.

13 MS. WHITE: That will be fine, Your Honor.

14 THE COURT: Thank you very much.

15 MS. WHITE: Thank Your Honor.

16 MR. MILLER: Thank you for hearing us today, Your Honor,  
17 and for ---

18 THE COURT: Um-hum.

19 MR. MILLER: --- your indulgence yesterday, ---

20 THE COURT: Sure.

21 MR. MILLER: --- it was a tremendous help.

22 MS. WHITE: And, Your Honor, if you need additional  
23 copies of anything, I think your law clerk indicated you might  
24 not have the full packet, I can do that. I I provided the  
25 transcript of the previous one but I'll be happy to make

MOTIONS AND MATTERS

1       copies for anything you need.

2               THE COURT:   If you would do that, that would be great.

3               MS. WHITE:   Okay.

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CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on June 17, 2011 at the time and place heretofore set forth; and that the foregoing pages numbered from 3 through 38, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

March 25, 2012



Margaret A. Woods, Court Reporter

in and for the State of South Carolina at Large.